

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WHEELING HOSPITAL, INC.,
a West Virginia not for profit corporation,
BELMONT COMMUNITY HOSPITAL, INC.,
an Ohio not for profit corporation,
WHEELING PEDIATRICS, LLC,
an Ohio limited liability company,
and WOMEN'S HEALTH SPECIALISTS
OF WHEELING HOSPITAL, LLC,
a West Virginia limited liability company,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

Civil Action No. 5:10CV67
(STAMP)

OHIO VALLEY HEALTH SERVICES
AND EDUCATION CORPORATION,
a West Virginia not for profit corporation,
OHIO VALLEY MEDICAL CENTER,
a West Virginia not for profit corporation,
EAST OHIO REGIONAL HOSPITAL,
an Ohio not for profit corporation, and
THE HEALTH PLAN OF THE OHIO VALLEY, INC.,
a federally qualified and state-certified
not for profit health maintenance organization,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFFS' MOTION FOR LEAVE
TO AMEND CLASS ACTION COMPLAINT AS AGAINST
THE HEALTH PLAN OF THE UPPER OHIO VALLEY, INC.

I. Background

The plaintiffs, two hospitals and two physician groups, filed a class action complaint in the Circuit Court of Ohio County, West Virginia, seeking to collect amounts allegedly owed to members of that class for health care services the plaintiffs provided to persons covered by an employee health plan sponsored by Ohio Valley Health Services and Education Corporation. Thereafter, the

defendants filed a notice of removal to this Court. On December 2, 2010, this Court dismissed Counts I and II of the Complaint, dismissing all defendants with the exception of The Health Plan of the Upper Ohio Valley, Inc. The plaintiffs have now filed a motion for leave to amend class action complaint to add other health care providers who fall within the claim definitions stated in the complaint who desire to become named as plaintiff class representatives in this case. The plaintiffs also seek leave to amend to recite that class certification is now sought pursuant to the Federal Rules of Civil Procedure instead of the West Virginia Rules of Civil Procedure. Finally, the plaintiffs seek leave to amend certain of the allegations of the complaint to more accurately describe The Health Plan of the Upper Ohio Valley, Inc.'s claims handling and payment process. Defendant The Health Plan of the Upper Ohio Valley, Inc. filed a response stating that it has no objection to the amendment, but that it reserves and will exercise its right to file an answer or response to the amended complaint and reserves its right to assert all defenses, including, but not limited to, compelling arbitration. For the reasons set forth below, the plaintiffs' motion for leave to amend class action complaint is granted.

II. Applicable Law

Federal Rule of Civil Procedure 15(a)(1)(A) states, in pertinent part, that "[a] party may amend its pleading once as a matter of course . . . before being served with a responsive

pleading." If a party seeks to amend its pleadings in all other cases, it may only do so "with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

Rule 15(a) grants the district court broad discretion concerning motions to amend pleadings, and leave should be granted absent some reason "such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment or futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962); see also Ward Elec. Serv. v. First Commercial Bank, 819 F.2d 496, 497 (4th Cir. 1987); Gladhill v. Gen. Motors Corp., 743 F.2d 1049, 1052 (4th Cir. 1984).

III. Discussion

The plaintiffs seek to amend their complaint to add additional class representatives, to conform the complaint to the Federal Rules of Civil Procedure, and to conform the complaint to evidence obtained during discovery. These amendments do not constitute an unfair surprise or prejudice to the defendant. Further, the amended class action complaint is not futile as it relates back to the original class action complaint. In response, defendant The Health Plan of the Upper Ohio Valley, Inc. does not object to the plaintiffs' request to file an amended class action complaint.

After a review of the record, this Court concludes that the plaintiffs have not exhibited any undue delay, bad faith, or dilatory motive. Moreover, any prejudice to the defendant is not significant as to prevent this Court from allowing the amendments, and this Court cannot conclude that the plaintiffs' amendments would be futile, as they relate back to the original class action complaint. Accordingly, this Court grants the plaintiffs' motion for leave to amend class action complaint as against the Health Plan of the Upper Ohio Valley, Inc.

IV. Conclusion

For the reasons set forth above, the plaintiffs' motion for leave to amend class action complaint as against The Health Plan of the Upper Ohio Valley, Inc. is hereby GRANTED. The Clerk is DIRECTED to file the amended complaint, which the plaintiff filed with this Court as a proposed amended class action complaint, Docket No. 81. The plaintiffs are DIRECTED to serve the amended complaint on the defendant. The Health Plan of the Upper Ohio Valley, Inc. shall make any defenses pursuant to Federal Rule of Civil Procedure 12 and any counterclaims or cross-claims pursuant to Federal Rule of Civil Procedure 13.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: January 24, 2011

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE